

REMARKS

Applicants respectfully request that the Request for Continued Examination fee be charged to the undersigned Attorney's Deposit Account 10-0100. Should additional fees or a credit be associated with the filing of this paper, the additional fees or credit can be charged or credited to the undersigned Attorney's Deposit Account 10-0100.

An Information Disclosure Statement (IDS) accompanies this paper.

Claims 26-30 are withdrawn.

Claims 14-15 are amended.

Claims 31-32 are added.

Applicants wish to express their appreciation for the Examiner's suggested claim to overcome the Sections 102(b) and 103(a) rejections. Applicants have accordingly submitted new claim 32.

Claims 14 and 15 are rejected under 35 USC § 102(b) or in the alternate under 35 USC § 102(a) in light of El-Khalaty.

Applicants respectfully traverse the rejections.

The relied on prior art admittedly does not disclose a green or mature whole fruit *Roystonea regia* pharmaceutical composition. Claims 14 and 31 recite the "green or mature whole fruit".

The relied on prior art El-Khalaty merely discloses a seed oil composition which is relied on in framing the rejections.

Applicants submit that the El-Khalaty seed oil composition is distinctly different from the present whole fruit composition. It is indeed recognized in the

art that the respective seed oil and fruit oil compositions contain different oleochemical components and oleochemical compositions in distinctly different amounts. This understanding in the art is confirmed by the reference to Choo Yuen May, FACS Newsletter 1/2000. (See the accompanying IDS). Further and equally important is the understanding in the art that Roystonea regia fruit and the Roystonea regia seed are distinguished in several respects. (See Scott Zona, Flora Neotropica, Monograph 71, December 16, 1996 and the accompanying IDS).

The Examiner concludes sua sponte, without evidentiary support, that the differences between El-Khalaty and the present composition are "so slight". This conclusion is also at odds with the facts as further discussed herein.

The Examiner also postulates that the El-Khalaty oil seed extraction methodology is the same as the present applicants' whole fruit extraction, and therefore one extract is inherent in the other. This is neither logical nor supported by the art. The art teaches and the present applicants confirm that fruit extracts and kernel or seed extracts are distinctly different compositions. The Examiner is duty bound to accept this salient art teaching. The Examiner is also duty bound to accept present applicants' statements with respect to the whole fruit extract composition.

The Examiner states that El-Khalaty teaches palmitoleic acid in an amount of "9.8%". This finding is however not supported by and is a misreading of the reference. El-Khalaty, at Table IV, p. 273 reports "Palmitoleic" acid in an amount of "0.8%", – i.e. 0.8 not 9.8%. (See the accompanying Exhibit A with an

enlarged Table IV). The insignificant or trace amounts of palmitoleic acid in the seed oil are confirmed by El-Khalaty: "Minor quantities of palmitoleic as well as linoleic acids were detected in all cases not exceeding 1%" (quoted at p. 273, emphasis supplied). El-Khalaty teaches away from 1.5 – 20.0% palmitoleic acid. And a rejection cannot be based on a misreading of the applied reference.

The Examiner seeks to buttress the Section 103(a) rejection by stating sua sponte that "the differences between that which is disclosed and that which is claimed are considered to be so slight" that El-Khalaty et al. and the present compositions would have similar characteristics. This is mere speculation and not supported by the art teaching with respect to "whole fruit" and "seed" extracts as being distinctly different. (See e.g. the accompanying IDS references).

Applicants agree with the Examiner that the Patent and Trademark Office is not equipped to conduct experiments with respect to the composition differences. That is the very reason the Examiner is obligated to accept the applicants' statement and the prior art statements as to the differences between "whole fruit" and "seed" extracts, and particularly the absence of palmitoleic acids in the El-Khalaty seed oil. A pharmaceutical whole fruit extract having a significant amount of palmitoleic acid is not disclosed in the art. The presently claimed pharmaceutical composition containing 1.5 -20.0% of palmitoleic acid is not obvious in light of the El-Khalaty seed oil food product containing in all cases only trace amounts of palmitoleic acid.

The Examiner's rebuttal argument is premised on the "Fun Science Facts from the Library of Congress" ("Fun Facts") discussion of coconut and the

coconut palm. This argument is respectfully not understood. The Fun Facts reference is seemingly contorted to conclude that the terms "seed" and "fruit" can be "used interchangeably". This cannot as a matter of lexicography or logic be so. The Examiner further contorts the argument in alleging that insofar as the amount of oil you get from a fruit and a seed may be similar, the respective compositions are therefore the same. This is also not logical and contrary to the art teaching that distinctly different fatty acid compositions are present in the respective whole fruit and seed extract compositions.

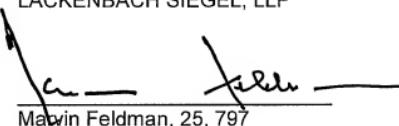
Applicants submit that for each and all of the foregoing reasons, claims 14-15 and 31-32 are in form for allowance.

An early allowance is respectfully requested.

Respectfully submitted,

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Enclosures: Information Disclosure Statement
Two Non Patent Documents
Exhibit A